

MONTANA LEGISLATIVE HISTORY

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Chapter 275 19 2001

Bill H _____ S 104

Original bill & history ☒ c

NO EXHIBITS INCLUDED
SEE INSERT

H. Committee on FISH, WILDLIFE + PARKS

S. Committee on _____

Hearing Date(s) 3/16 ☒ c

Hearing Date(s) 1/9 ☒ c

3/14 ☒ c

1/16 ☒ c

_____ c

_____ c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

Bill Draft Number: LC0284**Bill Type - Number:** SB 104**Short Title:** Revise fish and game enforcement laws**Primary Sponsor:** Mike Sprague**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 46

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/20/2001			
(S) Signed by Governor	04/20/2001			
(S) Transmitted to Governor	04/10/2001			
(H) Signed by Speaker	04/09/2001			
(S) Signed by President	04/06/2001			
(S) Returned from Enrolling	04/06/2001			
(C) Sent to Printing	04/05/2001			
(S) Sent to Enrolling	04/04/2001			
(S) 3rd Reading Passed as Amended by House	04/04/2001	44	4	
(S) 2nd Reading House Amendments Concurred on Voice Vote	04/03/2001	49	0	
(S) Scheduled for 2nd Reading	04/03/2001			
(H) Motion Carried	03/31/2001			
(H) Returned to Senate with Amendments	03/31/2001			
(H) 3rd Reading Concurred	03/31/2001	53	47	
(H) Scheduled for 3rd Reading	03/31/2001			
(H) Motion Carried	03/29/2001			
(C) Sent to Printing	03/29/2001			
(H) 2nd Reading Concurred as Amended	03/29/2001	52	47	
(H) 2nd Reading Motion to Amend Carried	03/29/2001	99	0	
(H) Scheduled for 2nd Reading	03/29/2001			
(C) Sent to Printing	03/15/2001			
(H) Committee Report--Bill Concurred as Amended	03/15/2001			(H) Fish, Wildlife and Parks
(H) Committee Executive Action--Bill Concurred as Amended	03/15/2001	11	9	(H) Fish, Wildlife and Parks
(H) Hearing	03/06/2001			(H) Fish, Wildlife and Parks
(H) Referred to Committee	02/01/2001			(H) Fish, Wildlife and Parks
(H) First Reading	01/20/2001			

(S) Transmitted to House	01/19/2001		
(S) 3rd Reading Passed	01/19/2001	43	4
(S) 2nd Reading Passed on Voice Vote	01/18/2001	44	4
(S) Scheduled for 2nd Reading	01/18/2001		
(S) Committee Report--Bill Passed as Amended	01/17/2001		(S) Fish and Game
(S) Committee Executive Action--Bill Passed as Amended	01/17/2001	11	0 (S) Fish and Game
(S) Hearing	01/09/2001		(S) Fish and Game
(S) Referred to Committee	01/03/2001		(S) Fish and Game
(S) First Reading	01/03/2001		
(C) Introduced Bill Text Available Electronically	12/18/2000		
(S) Introduced	12/18/2000		
(C) Pre-Introduction Letter Sent	11/13/2000		
(C) Draft in Assembly/Executive Director Review	11/03/2000		
(C) Bill Draft Text Available Electronically	10/26/2000		
(C) Draft in Input/Proofing	10/26/2000		
(C) Draft to Drafter - Edit Review [SAB]	10/26/2000		
(C) Draft in Edit	10/26/2000		
(C) Draft in Legal Review	10/26/2000		
(C) Draft to Requester for Review	10/11/2000		
(C) Draft Request Received	10/06/2000		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Legislative Council	
Drafter	Sternberg	Doug
By Request Of	Department of Fish, Wildlife, and Parks	
Primary Sponsor	Sprague	Mike

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Fish and Wildlife		Simple	FISH

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: Y
Session Law Ch. Number: 275

DEADLINE

Category: General Bills

Transmittal Date: 02/23/2001

Return (with 2nd house amendments) Date: 03/31/2001

Section Effective Dates

Section(s) Effective Date Date Qualified

All Sections 20-APR-01

SENATE BILL NO. 104

INTRODUCED BY M. SPRAGUE

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FISH AND WILDLIFE ENFORCEMENT STATUTES; CLARIFYING THE FORFEITURE OF PRIVILEGES PENALTY FOR WASTE OF GAME; CLARIFYING THE AUTHORITY OF A PEACE OFFICER, GAME WARDEN, OR OTHER AUTHORIZED PERSON TO DESTROY A DOG THAT CHASES, STALKS, OR PURSUES A HOOVED GAME ANIMAL AND PROVIDING AN OPTIONAL CRIMINAL PENALTY FOR THE DOG OWNER; CLARIFYING THE OFFENSE OF PROVIDING SUPPLEMENTAL FEED ATTRACTANTS TO GAME ANIMALS AND ADDING AN OFFENSE OF FEEDING OR ALLOWING BEARS TO FEED; REVISING TRAP TAGGING REQUIREMENTS TO INCLUDE TRAPS USED FOR ANY ANIMAL AND ALLOWING USE OF THE TRAPPER'S WILDLIFE CONSERVATION LICENSE NUMBER ON TRAP TAGS; AMENDING SECTIONS 87-3-102, 87-3-124, 87-3-130, AND 87-3-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-3-102, MCA, is amended to read:

"87-3-102. Waste of fish or game. (1) A person who is responsible for the death of a mountain lion commits the offense of waste of game if the person abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except a mountain lion, commits the offense of waste of game if the person:

(a) detaches or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or

all of these parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in the field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food commits the offense of waste of game if the person:

(a) purposely or knowingly transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) For the purposes of this section, the meat of a grizzly or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of waste of game may be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification.

Section 2. Section 87-3-124, MCA, is amended to read:

"87-3-124. Restrictions on hunting with dogs. (1) (a) Except as provided in 87-3-127 and subsection (2) of this section, a person may not chase with ~~dogs~~ a dog any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog ~~or dogs~~. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses ~~any~~ a dog chasing, stalking, pursuing, attacking, or killing hooved game animals may destroy that dog without criminal or civil liability.

(d) A person who purposely, knowingly, or negligently permits a dog to chase, stalk, pursue, attack, or kill hooved game animals is guilty of a misdemeanor and is subject to the penalty in 87-1-102(1). If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) The commission has authority to allow and regulate the use of dogs for hunting and chasing mountain lion and bobcat."

Section 3. Section 87-3-130, MCA, is amended to read:

"87-3-130. Taking of wildlife to protect persons or livestock. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this ~~chapter title~~ if the wildlife is molesting, assaulting, killing, or threatening to kill a person or livestock. A person who ~~so~~ takes wildlife protected by this ~~chapter title~~ shall notify the department within 72 hours.

(2) A person may not ~~intentionally~~ provide supplemental feed attractants to game animals by:

(a) purposely or knowingly attracting bears with supplemental feed attractants;

(b) after having received a previous warning, negligently failing to properly store supplemental feed attractants and allowing bears access to the supplemental feed attractants; or

(c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.

(3) A person who is engaged in the normal feeding of livestock or in the commercial processing of garbage is not subject to civil or criminal liability under this section.

(4) A person who violates this subsection (2) is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection section does not apply to supplemental feeding activities conducted by the department for disease control purposes.

~~(3)(5)~~ As used in this section:

(a) "livestock" includes ostriches, rheas, and emus; and

(b) "supplemental feed attractant" means any food, garbage, or other attractant for game

1 animals."

2

3 **Section 4.** Section 87-3-504, MCA, is amended to read:

4 **"87-3-504. Metal tags required on traps.** ~~Any~~ A person trapping fur-bearing animals, ~~or~~ predatory
5 animals, ~~or any other animals for their pelts~~ shall fasten a metal tag to all ~~such~~ traps bearing in legible
6 English the name and address or wildlife conservation license number of the trapper, except that ~~no~~ a tag
7 ~~shall be~~ is not required on traps used by landowners trapping ~~with permit~~ on their own land ~~and~~ or on an
8 irrigation ditch right-of-way contiguous to the land."

9

10 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

11

- END -

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON FISH AND GAME**

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on January 9, 2001 at 3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Jack Wells, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Edward Butcher (R)
Sen. William Crismore (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Eve Franklin (D)
Sen. Debbie Shea (D)
Sen. Bill Tash (R)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Roberta Opel, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 104, 1/7/2001
Executive Action: None.

HEARING ON SB 104

Sponsor: SENATOR MIKE SPRAGUE, SD 6, Billings.

Proponents: Robert Lane, Chief Legal Counsel, FWP
David Dittloff, Montana Wildlife Federation
Cynthia M. Kromm, Butte
Janet Ellis, Montana Audubon
Duane Johnson, Little Basin Creek resident
Melissa Tuemmler, President, Montana Trappers Assoc.
A.J. Michnevich, FWP
Marc Bridges, Montana Department of Livestock

Opponents': None

Opening Statement by Sponsor: SEN. MIKE SPRAGUE, SD 6, Billings, introduced SB 104. The bill, requested by Montana Department of Fish, Wildlife & Parks, (FWP), is a general revision of FWP enforcement statutes. It addresses several statute concerns including: penalty for wasted game, game warden responsibilities, dogs chasing wildlife and the improper feeding of wildlife. The bill also revises portions of trapping rules currently in place.

Proponents' Testimony: Robert Lane, Chief Legal Counsel for FWP, presented written testimony in support of SB 104.
EXHIBIT(fis06a01) The bill is intended to clarify FWP statutes, he said.

Wasted game statutes were revised in 1991 and include a 24-month loss-of-hunting privileges, Mr. Lane said.

FWP game warden's presently have authority to kill any dog that is attacking or killing hooved game animals. The public has concerns about wildlife harassed by dogs as well as social concerns for the killing of someone's pet, Mr. Lane stated, noting that FWP would prefer not to destroy a dog. SB 104 would allow FWP to cite a dog owner whose dog is harassing wildlife.

SB 104 also addresses Department concern for individuals who feed wildlife that attracts bears, Mr. Lane said. Problem bears are initially relocated and, in some instances, if problems persist, bears are destroyed. SB 104 established criminal sanction in those cases where individuals, who have been warned, continue to be negligent. The statutes incorporate a clear exception for

those feeding livestock and for garbage collectors, **Mr. Lane** added.

SB 104 would further require identification on all traps for the benefit of landowners and for purposes of enforcement. Trap identification could include either name, address or FWP Conservation License number.

David Dittloff, Montana Wildlife Federation (MWF), spoke in support of SB 104 stating the bill allows FWP to do their job. Mr. Dittloff said MWF wants to ensure access to Montana wildlife, provide adequate habitat for wildlife, and allow for management of wildlife by FWP.

Cynthia M. Kromm, Butte, testified in support of SB 104 **EXHIBIT(fis06a02)** Ms. Kromm cited numerous examples of dogs chasing and harassing wildlife. "Wildlife are always the loser and dogs are usually the culprit," Ms. Kromm stated.

Janet Ellis, Montana Audubon, testified in support of the bill with specific support for the portion of the bill that addresses feeding bears. SB 104 clarifies the law for citizens and gives bears a fighting chance not to become problem bears.

Duane Johnson, Little Basin Creek resident, urged adoption of SB 104 and submitted testimony documenting dog attacks on wildlife **EXHIBIT(fis06a03)** and photographs of property fences destroyed by dogs pursuing wildlife.

Melissa Tuemmler, President, Montana Trappers Association, testified in support of Section 4 of SB 104, trap identification. Trappers requested this portion of the bill.

A.J. Michnevich, appeared on behalf of FWP to express the need for game statute revisions allowing game wardens to issue citations to dog owners whose dogs chase or kill wildlife. Presently, there is no provision for wardens to cite a dog owner but they can destroy a dog if they witness it chasing or pursuing wildlife. Game wardens do not want to kill people's pets, **Mr. Michnevich** added.

Wildlife feeding generally causes problems for neighbors, **Mr.**

Michnevich said. People may not realize the problem of bears becoming habituated to humans and food sources. Metal tag identification on all traps via a FWP Conservation number is a good idea, he concluded.

Marc Bridges, Montana Department of Livestock, said he supported specifically the dog portion of SB 104 which complimented a similar statute of the Department of Livestock.

Marilyn Rundquist testified in support of SB 104 on her own behalf. She stated FWP should enforce loss of privileges for those who waste game. It is also common sense for FWP to be able to cite dog owners whose dogs are harassing wildlife, she said. FWP should retain its ability to dispatch these dogs. Criminal sanction for feeding bears is also common sense. Trappers should be required to place identification on their traps.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. JON ELLINGSON asked **Mr. Lane** to define "game animal" as it relates to the feeding of Canada geese and ducks along the river in Great Falls.

Mr. Lane stated that knowingly, and purposefully feeding game, when it is a threat to public safety, is the concern of FWP. The Department is not trying to prevent people from feeding birds, deer and elk and is not requesting that authority.

SEN. EVE FRANKLIN raised a question about commercial garbage processors.

Mr. Lane stated that livestock feeding and the commercial processing of garbage are not the main focus of SB 104.

SEN. ED BUTCHER said SB 104 should include a section addressing hunters who possess damaged game parts as well as a section related to hunters whose game animals are confiscated by game wardens.

Mr. Lane said there is no way to construct a statute that cannot

be abused. He stated SB 104 incorporates the same wasted game provision the Department has had in place for, perhaps, thirty or forty years. Hunters with game unfit for human consumption are issued another license.

Jeff Darrah, FWP Game Warden, stated duplicate licenses will continue to be issued to hunters who have game that is unfit for human consumption.

VICE-CHAIRMAN JACK WELLS suggested that lengthy dialogue on this particular subject should be addressed in Executive Session.

SEN. BUTCHER stated that he did not see language in the bill relating to dogs on private property. He said ranch dogs are often used to patrol haystacks and could be seen, by game wardens, as chasing or harassing deer when they are actually protecting haystacks. The concern is for personal dogs on private property, he said.

Mr. Lane stated this was not the intent of the current statute. The Department will continue to assert that dogs on private property that are seen attacking or killing livestock or wildlife could still be liable for criminal sanction.

SEN. BUTCHER asked if a landowner would be liable in situations where unharvested crops could attract bears.

Mr. Lane said there should be dialogue on the problem, if desired.

SEN. AL BISHOP asked **Mr. Lane** if game-chasing-language in Section 2 was restricted to hoofed animals.

Mr. Lane said the intent of the Section relates to dogs chasing wildlife unless the chase season is underway. **Mr. Lane** noted there are possibly two issues in this Section: hunting with dogs and dogs chasing animals.

SEN. FRANKLIN asked **Mr. Lane** to define the geographical location of the majority of dog vs. wildlife issues.

Mr. Lane stated the rural, urban interface areas are those areas

of concern.

SEN. PETE EKEGREN suggested that a pack of dogs "ripping up" wildlife is possibly not any worse than wolves attacking wildlife.

SEN. EKEGREN asked if there was a risk associated with feeding grain.

Mr. Lane stated this would probably not be a problem although corn does attract bears.

VICE-CHAIRMAN WELLS asked **Mr. Lane** if FWP would be the only one to know the Conservation License number used on traps.

Mr. Lane said only FWP would have a connection between the Conservation License and the trapper's name. Individual names could not be released due to privacy concerns.

Closing by Sponsor:

CHAIRMAN SPRAGUE closed on SB 104 telling the committee there must be a method for managing dogs chasing wildlife.

VICE-CHAIRMAN WELLS reminded the committee that requests for amendments to the bill should be directed to Mary Vandembosch, Legislative Branch.

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on January 16, 2001 at 3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Jack Wells, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Edward Butcher (R)
Sen. William Crismore (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Eve Franklin (D)
Sen. Bill Tash (R)
Sen. Jon Tester (D)

Members Excused: Sen. Debbie Shea (D)

Members Absent: None.

Staff Present: Roberta Opel, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 54, 1/16/2001;
SB 186, 1/16/2001
Executive Action: SB 104
SB 186

HEARING ON SB 54

Sponsor: SEN. GLENN ROUSH, SD, SD 43, Cut Bank

Proponents: Jim Jacobsen, Montana Veteran's Affairs Division
Jeff Hagener, Director, FWP

SEN. COBB said approximately 5,000 first-time fishermen would purchase one, 2-day temporary license thereby possibly reducing the sale of seasonal licenses.

SEN. SPRAGUE asked if fishermen were restricted to only one temporary license per year. He suggested it was possible for someone to spend more money buying temporary licenses than one permanent license.

Closing by Sponsor:

SEN. COBB stated he had requested the hearing so there would be a record of committee proceedings relating to SB 186.

EXECUTIVE ACTION ON SB 186

Motion/Vote: **SEN. JACK WELLS** MOVED TO TABLE SB 186. The motion carried unanimously, 11-0.

EXECUTIVE ACTION ON SB 104

Motion/Vote: **SEN. FRANKLIN** MOVED SB 104 DO PASS.

Discussion:

SEN. BUTCHER presented his amendments to SB 104.
EXHIBIT(fis12a03)

SEN. SPRAGUE asked **Beate Golda, FWP**, to explain language within this amendment.

Miss Golda explained the amendment to the committee.

SEN. BUTCHER responded that his amendments to SB 104 were self-explanatory.

SEN. SPRAGUE, sponsor of the bill, suggested the amendments improved the bill.

Motion/Vote: **SEN. FRANKLIN** MOVED THE AMENDMENTS TO SB 104. The motion carried unanimously, 11-0.

Motion/Vote: **SEN. FRANKLIN** MOVED SB 104 DO PASS AS AMENDED. The motion carried unanimously, 11-0.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS

Call to Order: By **CHAIRMAN DANIEL FUCHS**, on March 6, 2001 at 3 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Daniel Fuchs, Chairman (R)
Rep. George Golie, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Debby Barrett (R)
Rep. Paul Clark (D)
Rep. Ronald Devlin (R)
Rep. Nancy Fritz (D)
Rep. Gail Gutsche (D)
Rep. Jeff Laszloffy (R)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Allen Rome (R)
Rep. Jim Shockley (R)
Rep. Donald Steinbeisser (R)
Rep. Bill Thomas (R)
Rep. Brett Tramelli (D)

Members Excused: Rep. Joe Balyeat, Vice Chairman (R)

Members Absent: Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Larry Jent (D)

Staff Present: Linda Keim, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 238, 2/28/2001; SB105,
2/28/2001; SB 104, 2/28/2001
Executive Action: SB 238; SB 105

inventory. **REP. DEVLIN** said Lewis and Clark Visitor's Center is leased out. Does it generate the most money in the state? **Doug Monger** said it generates \$125,000. Lewis and Clark Caverns offers a viable business opportunity for a private businessman to come into the park and make money. They do that at Hell creek State Park and Tongue Reservoir. This bill will address those sites where we are having nickle and dime sales, where no private entity would come in and try to make a living. **REP. DEVLIN** said he wants to make sure this will not affect the people that now lease the sites. Does FWP have any intention of going in to manage those sites themselves? **Doug Monger** said there is no intent to do that.

CHAIRMAN FUCHS asked about a video that is coming out called: "On a Saturday Night". Is that something you will offer for sale? **Doug Monger** said that is the type of item they would like to offer for sale. They are currently available.

REP. BARRETT asked if they foresee a future need for more employees to take tickets and sell these items? **Doug Monger** said that is the way they would handle it. The current employee or the current volunteer staffing the visitor center would provide this service. If this account generates enough funding, someday in the future, it may be used to supplement the employees giving guided tours.

Closing by Sponsor:

SENATOR MAHLUM said he is glad to carry this Bill, as he knows the importance of having inventory on the shelf. If FWP wants to do it, this is a great thing for that department, for the people, and for state government because they will make a little money that may trickle down to the general fund. Asks for support.

Close Hearing on SB 105.

HEARING ON SB 104

Sponsor: **SENATOR MIKE SPRAGUE, SD 6, BILLINGS HEIGHTS**

Proponents: **Jeff Hagener, Fish, Wildlife and Parks**
Janet Ellis, Montana Audubon
David Dittloff, Montana Wildlife Federation

Opponents: **None**

Informational Witnesses: **None**

Opening Statement by Sponsor:

SENATOR MIKE SPRAGUE, SD 6, BILLINGS HEIGHTS said SB 104 has some rule changes that are well overdue. It deals with wasted game, dog control, feeding wild animals, and some trapping regulations.

Proponents' Testimony:

Jeff Hagener, Fish, Wildlife and Parks presented written testimony that he followed in his remarks to the Committee, **EXHIBIT(fih51a03)**. He said the bill revises four fish and wildlife enforcement statutes to clarify existing law and better enable game wardens to address problems. He also introduced warden captain **Jeff Darrah**, from Missoula and **Mark Earnhardt**, law enforcement program manager, from Helena.

Janet Ellis, Montana Audubon said they support the bill. She noted particular support to the section that clarifies what actions are in violation in situations where bears are being fed, and end up being destroyed. This seems fair to citizens because it spells out what they can and can't do in situations where bears are being drawn into an area. SB 104 is also fair to the bears because it gives them a chance to survive.

David Dittloff, Montana Wildlife Federation said they support the bill because it allows the department to do their job. Wasted game is a serious hunting ethics violation. Increasing the fines sends a message that this is unacceptable behavior. Dogs chasing wildlife, particularly on the rural - urban fringes, have become a serious problem. This causes stress to the animals when they are already in jeopardy, particularly during the harsher winters.

MWF also believes in the section on feeding bears. When bears are purposely and knowingly fed, whether to get pictures or because people enjoy viewing them, it becomes a health hazard for people in the local community. The end result is often that the bear is disposed of, particularly with grizzly bears. This bill gives authority and power to do something significant about this issue. Encourage a DO PASS.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. SHOCKLEY said he will be carrying amendments to the department in regard to this bill. One provision bothers him: when deer are on his private land, eating his wife's flowers and everything else, he thinks his dog ought to be able to chase the

deer off his land. What about this scenario? **Jeff Hagener** defers to one of the wardens as to how they would handle it.

Jeff Darrah, FWP Warden Captain in Region 2, Missoula said if the dog could be trained to stop at his property boundary, that would be acceptable. **REP. SHOCKLEY** said there is a distinction with dogs chasing deer in the national forest and his dog chasing FWP deer off his private property. There are ten times the white tailed deer in the Bitterroot as when he was a kid. They kill over 700 on the highway, and there is not a shortage of white tailed deer. If a few more could be killed, it would be good for everybody. In the urban fringe, he thinks people should be able to let their dogs run and if the deer are there, they really don't hurt them: running the deer off is a good idea. But, there should be a distinction between the national forest or state land and private property. **Jeff Darrah** said he did not disagree on that. In Ravalli County, they continue to have the problem where dogs hamstringing fawns and chase deer; it is not a pretty sight. They have a lot of deer in Ravalli County and are trying to address that problem with a lot of liberal seasons and limits. **REP. SHOCKLEY** said ranchers were against dogs chasing sheep and cows and they can already kill anything that chases their livestock. That is the way it should be. But in this case, **REP. SHOCKLEY** feels he and his dog are being imposed upon, and he would vote against that part of the bill.

REP. LASZLOFFY said on Page 3, Line 5: "A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large". This seems to deal only with the defense of the dog being allowed by another person to run at large; what if somebody's dog just gets out by digging underneath its kennel fence? Is there no defense for somebody who is not willfully allowing their dog to run, but the dog just happens to get out?

Jeff Darrah said there are less than 65 field wardens in Montana. One of the things they take a lot of pride in is their discretion and their ability to judge each situation for what it is. What they are asking for is another tool, short of shooting the dog that is in the act of chasing or killing the deer. They don't want to kill somebody's pet, but the dog that gets out by mistake and is chasing elk or deer could be shot, because it is already too late to determine why they got out. In order to make a case against an individual whose dog did just get out, and actually be able to cite him for that violation, it would be like any other case, they would have to get their facts together and show negligence on the part of the dog owner. If they went to the dog owner and he showed them the kennel where the dog had dug out,

and it was a mistake, they could address that with a warning and the owner would not be cited.

REP. CLARK refers to Page 3, Lines 24-26; how do you determine that a concentration of game animals may potentially contribute to the transmission of disease? **Jeff Darrah** said that was part of the problem with the old statute; it has been unenforceable. When they have someone feeding deer, and this happens regularly in Missoula, there are a lot of deer coming into a yard. They can't prove that it causes disease, but it is a problem. There are traffic accidents because they have dogs that chase wildlife through town. They had a call where a dog was chasing a deer in Missoula and a lady hit the deer which had been feeding in someone's yard. FWP would like to add to Line 25-26: "that constitutes a threat to public safety". In another situation, someone was feeding bears and they asked him to stop as there were children in the area. He did stop for two weeks, but then started again. FWP would like to be able to say "that is a public safety threat, please stop it", and be able to enforce it.

REP. RIPLEY said he has a haystack right next to the highway with 25-30 deer coming in to feed every night. When he goes out to check cows that are calving in the middle of the night, the deer run across the highway. If the general public runs into the deer, who is liable? **Jeff Darrah** said that is part of living in Montana and he would not be liable. You are not purposefully feeding the deer, that is part of your agricultural operation.

REP. BALES refers to Page 2, Line 14-19 where it says anyone caught wasting any game animal will automatically receive a 24 month suspension of hunting privileges. Why is it necessary to have mandatory language here, where in other laws there is some discretion on the part of the judge? **Jeff Hagener** defers to **Bob Lane, Chief Legal Counsel, FWP** who answered that in terms of the forfeiture of privileges, FWP statutes set up two categories. One is for violation of commission regulations and a lesser violation; forfeiture is at the discretion of the court. For violation of a more serious nature, forfeiture has been phrased in mandatory terms in the statute. Wasted game has always been considered a more serious violation, and requires a mandatory forfeiture of privileges. However, judges make their own decisions on this. If their defense appears to the judge to be a minor violation, they routinely do not use the mandatory privilege of forfeiture, but use their own discretion. That discretion is always built into this and that is how judges exercise their discretion. **REP. BALES** asked if they would still have this discretion if SB 104 is passed? **Bob Lane** said he could guarantee that the judges will exercise that discretion. **REP. BALES** said he thought judges had to uphold the law, and this

clearly states they will do it, please explain. **Bob Lane** stated he is not saying judges don't have to uphold the law. He is just saying that judges have a certain amount of discretion in sentencing and you have to factor that in with how they interpret the mandatory nature of this. A lot of judges will consider the circumstances and believe they can use discretion. That has been the practice in the past. **REP. BALES** stated it does say they will, and the judge could get in trouble for not doing it. **REP. BALES** also questions the disposal of edible parts of the animal.

Some people eat the heart and the liver; other people probably leave those in the field. Since those are edible parts; would that be considered abandoning parts of the animal? **Bob Lane** defers to **Jeff Darrah** for determination. **Jeff Darrah** answered there is a commission regulation in place that describes what portion of the animal has to come out of the field with the hunter. Usually that is four quarters and the back straps. It is the hunter's choice whether to leave the internal organs.

REP. RICE refers to Page 3, Line 9 where it says a person may use trained or controlled guard dogs to chase or herd away game animals to protect their agricultural products, growing crops, and stored hay and grain. Isn't this somewhat of a subjective determination; who determines if that dog is trained, protecting growing crops? **Jeff Hagener** answered that would be up to the warden's discretion. The warden who went out to investigate and follow up would find out if it was the rancher's dog, and if that was why they had the animal there. Here they are dealing with feral dogs, or dogs that are pets just running loose in the subdivision. **REP. RICE** asked if he would agree that is a subjective decision? **Jeff Hagener** said yes, it is subjective; it would be the warden's call.

Jeff Hagener added remarks regarding **REP. BALES'** question which concerned a person convicted of wasting game. The discretion is still there for the warden in the field. He will make the determination whether he even cites a person for wasting game to start with. No one would be cited for leaving the heart or liver in the field. The conviction does not occur with the citation.

Closing by Sponsor:

SENATOR SPRAGUE thanked the Committee for a good hearing and said that they made a change to cover concerns of the person with the guard dog, etc. The way the Senate read it was "if that is my property and I own the dog, he is guarding my things, and you will have to take my word for it". **SENATOR SPRAGUE** said if he designates the guard dog, the dog is guarding his hay fields or he is guarding the garden. That was put in so there would be no misunderstanding. The other part they changed was in the

domestic part; "if I am growing grass and my wife has flowers, and the deer raise havoc with it, my dog is there to keep the deer away, and he is guarding my assets as well". It has become a real problem. **SENATOR SPRAGUE's** son has a border collie that loves to chase deer. When he talked to FWP about the bill, he wasn't aware that FWP had a right to shoot the dog. If for some reason, the dog took off and was a mile away and there were a lot of fawns, FWP could shoot the dog if they chose to. Contacting the owner is a more humane way. The dog's owner is the one who needs to correct this situation. **SENATOR SPRAGUE** said he had heard accusations that people actually feed bear and couldn't believe it. FWP gave him a sting tape of people in the Missoula area feeding bears oreo cookies. The film is available for anyone who would like to see it. The lady was getting so she literally would put the oreo in her mouth and the bear would come and take the oreo out of her mouth because it was so comfortable with humans. These are some of the things SB 104 covers.

Close Hearing on SB 104.

EXECUTIVE ACTION ON SB 238

Motion: REP. GOLIE moved that SB 238 BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. GOLIE moved that SB 238 BE CONCURRED IN. Motion carried 13-6 with Bales, Barrett, Devlin, Rice, Ripley, and Steinbeisser voting no.

REP. GOLIE will carry the Bill on the House floor.

EXECUTIVE ACTION ON SB 105

Motion: REP. DEVLIN moved that SB 105 BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. DEVLIN moved that SB 105 BE CONCURRED IN. Motion carried unanimously.

REP. FUCHS will carry the Bill on the House floor.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS

Call to Order: By **CHAIRMAN DANIEL FUCHS**, on March 13, 2001 at 3 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Daniel Fuchs, Chairman (R)
Rep. Joe Balyeat, Vice Chairman (R)
Rep. George Golie, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Debby Barrett (R)
Rep. Paul Clark (D)
Rep. Ronald Devlin (R)
Rep. Tom Facey (D)
Rep. Nancy Fritz (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Larry Jent (D)
Rep. Jeff Laszloffy (R)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Allen Rome (R)
Rep. Jim Shockley (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)

Members Excused: Rep. Bill Thomas (R)

Members Absent: None.

Staff Present: Nina Roatch for Linda Keim, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 286, 3/12/2001; SB 431,
3/12/2001

Executive Action: SB 262; SB 431; SB 285; SB 104

EXECUTIVE ACTION ON SB 104

Motion: REP. SHOCKLEY moved that SB 104 BE CONCURRED IN.

Discussion:

REP. LASZLOFFY said he sensed during the hearing that there may be a move to table this bill. He said he really likes some parts of the bill, especially the trapping part, and would ask that a motion to table be deferred until later in the discussion.

Motion: REP. SHOCKLEY moved AMENDMENT 01 TO SB 104 BE ADOPTED.

Discussion:

REP. SHOCKLEY said currently if you have to shoot a cougar or something like that, you have to let the department know. Amendment 01, EXHIBIT(fih57a06) says you must surrender or arrange to surrender the wildlife to the department within 72 hours.

REP. CLARK asked what the intention of the amendment is? REP. SHOCKLEY said the statute simply requires that you notify the department when you shoot a game animal like a cougar or mountain lion, which is also a predator. It doesn't say specifically that the department gets to take the animal. They want to make it clear that if you have to shoot the mountain lion, you don't get to keep the mountain lion.

REP. CLARK said he is in support of the amendment.

REP. DEVLIN asked why you don't get to keep the mountain lion, since it molested your animals? Why is that important? REP. SHOCKLEY said for two reasons: you have a right to shoot the animal, but you don't want to encourage people to shoot mountain lions that don't need to be shot. This way it is clear that if you have to shoot a mountain lion, you aren't going to get any benefit from shooting it. That is reasonable.

Motion/Vote: REP. SHOCKLEY moved that AMENDMENT 01 TO SB 285 BE ADOPTED. Motion carried 15-5 with Bales, Devlin, Rice, Ripley, and Steinbeisser voting no.

Motion: REP. SHOCKLEY moved AMENDMENT 02 TO SB 285 BE ADOPTED.

Discussion:

REP. SHOCKLEY said Amendment 02, **EXHIBIT(fih57a07)**, states that the department can destroy a dog found to be chasing, stalking, pursuing, attacking or killing hooved game animals on public land or on private land at the request of the landowner. Page 3, line 9-10 strikes the word "guard", but the dogs that are allowed to protect your property can also protect your lawns and gardens.

REP. BARRETT asked what if your neighbor entices the deer? **REP. SHOCKLEY** said that would be unfortunate. He feels that he has a right to do whatever he wants with his dog on his property. If someone doesn't want his dog chasing the deer off their property, then he is obligated to keep track of his dog.

REP. LASZLOFFY said they use their dogs to keep deer out of their garden, and it was nice because they didn't have to put up electric fences. If they didn't have the dog running free on their property, they wouldn't have a garden.

Motion/Vote: **REP. SHOCKLEY** moved that **AMENDMENT 02 TO SB 104 BE ADOPTED**. Motion carried 16-4 with Barrett, Gallus, Gutsche, and Rice voting no.

Motion/Vote: **REP. SHOCKLEY** moved that **SB 104 BE CONCURRED IN AS AMENDED**. Motion carried 11-9 with Bales, Barrett, Gallus, Jent, Rice, Ripley, Rome, Steinbeisser, and Thomas voting no.

CHAIRMAN FUCHS said that **REP. SHOCKLEY** will carry the bill.

EXECUTIVE ACTION ON SB 431

Motion: **REP. FACEY** moved that **SB 431 BE CONCURRED IN**.

Discussion:

REP. FACEY said he, too, would like to make sure it is okay to shoot gophers. Do we need that as a conceptual amendment? **REP. GUTSCHE** said she did not think an amendment was needed. It is very clear on Page 1, lines 15-17. It says you have to barter, offer for sale, ship or transport them for sale; nobody is doing that with gophers or prairie dogs.

REP. LASZLOFFY reminded the committee that when **Chris Smith, FWP** was testifying, he used the term "exploiting the species". You may not be taking them home, but you are exploiting them for commercial gain, and somebody can construe that to mean commercial use.